THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.21106 of 1996
Dated:05-01-2007

BETWEEN:
M.A.Razzack

Petitioner

And

Revenue Divisional Officer,
Kakinada, East Godavari District and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.21106 of 1996

ORDER:

1. This writ petition has been instituted challenging the orders passed by the first respondent-Revenue Divisional Officer through his proceedings dated 27-03-1996 and 22-07-1996.

2. The case of the writ petitioner is that he was awarded a contract to execute certain civil works for Spectrum Power Generation Limited at Kakinada and to enable him to execute the same, he submitted a representation soliciting permission to excavate and remove earth from the tank bed of a tank situated in Komaragiri village and that he had been granted permission by the Executive Engineer, Y. I. Division, Peddapuram on 28-05-1994, 06-07-1994 and 22-06-1995 and that in accordance therewith he had removed the earth from the tank bed, but however, the first respondent-Revenue Divisional Officer had passed orders on 27-03-1996 alleging that the writ petitioner had excavated the earth in an extent of more than Ac.15-00 of the tank bed without making any payment towards royalty or seigniorage fee either to the Gram Panchayat or to the Government. Therefore, he had been ordered to pay a sum of Rs.7,50,000/- towards seigniorage fee for the earth excavated and removed by him from out of the tank in question over an extent of Ac.15.00. In response to this urgent notice dated 27-03-1996, the writ petitioner submitted a detailed explanation on 21-04-

1996 pleading that since there was no stipulation incorporated in the grant of permission towards payment of royalty or seigniorage fee, he had not paid the same. The writ petitioner has also disputed his liability to pay the amount as demanded and he has also disputed the factum that he had excavated more quantity of earth than what has been permitted to do so. He also raised various other pleas and contentions. On receipt of the explanation dated 21-04-1996 from the writ petitioner, a detailed report has been called for from the Deputy Executive Engineer, Y.I. Sub Division, Pithapuram and that the Deputy Executive Engineer, Y.I. Sub Division, Pithapurm seems to have reported that a total quantity of 1,26,102 cubic metres of earth had been removed in the tank bed, whereas the writ petitioner has been authorized to excavate a total of 30,000 cubic metres only. Based on this report, the first respondent-Revenue Divisional Officer has passed orders through his proceedings dated 22-07-1996 directing the writ petitioner to pay a sum of Rs.11,25,000/- at the rate of Rs.50,000/- per acre towards seigniorage fee for having excavated earth in an extent of Ac.22.50 cents.

3. In the counter affidavit, it has been pointed out that by an oversight the Executive Engineer, Y.I. Division of Irrigation Department, Peddapuram had forgotten to incorporate the condition relating to payment of royalty or seigniorage fee, but however, it has been asserted that the writ petitioner had removed more quantity of earth from the tank bed than the permitted quantity by the Executive Engineer and therefore, they have made the demand in accordance with the rate prevailing.

4. I have heard Sri J.V.Suryanarayana, the learned senior counsel for the writ petitioner as well as the learned Government Pleader for Revenue. Among various other contentions, Sri Suryanarayana has mainly stressed three

contentions and they are:

i) before the impugned determination of the liability of the writ petitioner by the first respondent, he ought to have put the writ petitioner on notice and he ought to have provided the writ petitioner with an opportunity to demonstrate that he has not violated the terms of the grant, for him to be made liable for paying up huge sums of money,

ii) the first respondent seems to have collected certain material behind the back of the writ petitioner and has used the same for arriving at a conclusion that the writ petitioner is liable to pay a sum of Rs.11,25,000/- towards seigniorage fee/ royalty, without making available a copy of the report said to have been furnished by the Deputy Executive Engineer, Y.I. Sub Division, Pithapuram in that regard and

iii) neither the impugned order nor the counter affidavit did disclose the authority for the respondent-State to levy and demand the seigniorage fee or royalty as the case may be for excavating and removing the earth from the bed of the tank and therefore, the very demand is illegal, if not totally arbitrary.

5. The learned senior counsel would elaborate his submissions by pointing out that the impugned exercise is a case of determination of fiscal liability of the writ petitioner running in to several lakhs of rupees and therefore, it needs sanction of law and a fair and reasonable procedure should be adopted for imposition of any such seigniorage fee or royalty and that the person against whom such a determination is taking place must be afforded a fair and equitable opportunity of demonstrating that he is not liable to pay the demand.

6. The learned senior counsel would urge that if one were to read the orders passed by the first respondent-Revenue Divisional Officer on 27-03-1996 and on 22-07-1996, they unmistakably leave an impression that the first respondent has already determined and decided the issue and that it is not a case of keeping his mind open for any persuasion. Before passing those orders on 27-03-1996 and 22-07-1996, the first respondent-Revenue Divisional Officer has not afforded any opportunity to the writ petitioner to put-forth his claim. Therefore, the principles of natural justice have been followed clearly in the breach. In **S.K.Bhargava Vs. Collector, Chandigarh and others**[1]. the Supreme Court has pointed out as follows:

> *"In our opinion, even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the word "determine" and "sum due" implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realization, but it is the "sum due" as determined by the Managing Director which alone is recoverable. As already observed, this determination cannot be done without notice to the alleged defaulter."*

7. Therefore, he urged that both the orders deserve to be set-aside.

8. Per contra, the learned Government Pleader for Revenue would urge that a fair and reasonable opportunity has been provided to the writ petitioner before the orders passed by the first respondent-Revenue Divisional Officer dated 27-03-1996 as well as 22-07-1996 and since the writ petitioner had failed to avail

of the same, action for recovery of the amount has been taken up. On behalf of the third respondent, who got impleaded, Sri V.V.L.N.Sharma, the learned counsel urged that the first respondent is fully justified in levying and collecting the seigniorage fee inasmuch as the writ petitioner has excavated earth from the tank bed firstly unauthorizedly and secondly without paying any fee therefor.

9. I have given my anxious consideration to the entire matter. The Executive Engineer, Peddapuram, while passing orders on 28-05-1994, 6th July,1994 and 22-06-1996 respectively authorizing the writ petitioner to excavate and carry away quantities of 5,000, 5,000 and 20,000 cubic metres of earth from the tank bed in question, had not incorporated any stipulation or obligation to pay royalty or seigniorage fee. Though, the counter affidavit filed on behalf of the first and second respondents is trying to explain it away as some sort of a mistake or oversight on the part of the Executive Engineer, but nonetheless, the fact remains that there was no such stipulation incorporated. If levy of any fee, royalty or seigniorage is permissible in accordance with any scheme, the same at the first instance ought to have been incorporated in the grant. Even if it is not so incorporated, a reference thereto ought to have been made in the orders passed by the Revenue Divisional Officer on 27-03-1996 and 22-07-1996. Therefore, clearly the writ petitioner has been taken by surprise when he has been demanded to pay to begin with a sum of Rs.7.50,000/- and later on Rs.11,25,000/-. The very expression “determination” connotes a decision of finality to a lis between two parties. Such an exercise, even if it were to be a pure and a simple administrative exercise, is bound to visit the person who is likely to be affected by the same with adverse consequences. Any order which visits the other with such adverse consequences can only be passed after providing a fair and reasonable opportunity for the person to whom it matters to

put-forth his defence. The record does not disclose that the first respondent has followed this procedure at all before passing the orders on 27-03-1996 and 22-07-1996.

10. The second aspect of the matter is that he had called for a report from the Deputy Executive Engineer, Y.I. Sub Division, Pitapuram and based upon the findings supplied by the said Deputy Executive Engineer, the first respondent had come to the conclusion that the writ petitioner has excavated and removed a total quantity of 1,26,102 cubic metres of earth from the tank bed in question. Obviously, the writ petitioner has never been put on notice of this specific allegation/averment nor was he supplied with a copy of the report or calculation made by the said Deputy Executive Engineer, which leads to the conclusion that the writ petitioner has removed the aforementioned quantity of earth from the tank bed. Therefore, it is clear that the writ petitioner had been denied the benefit of meeting the specific case set up against him in the report submitted by the Deputy Executive Engineer, Y. I. Sub Division, Pithapuram. This also amounts to denial of a fair and equitable opportunity for the writ petitioner to put-forth his defence. Since no orders adversely affecting the interests of any one can be passed without complying with fully and faithfully with the principles of natural justice, the orders passed by the first respondent- Revenue Divisional Officer on 27-03-1996 and 22-07-1996 deserve to be set-aside and accordingly I set aside the same.

11. But however, if the writ petitioner is otherwise liable to pay in terms of any statutory or non-statutory scheme any fee, seigniorage fee or royalty for excavating and transporting the earth from the tank bed, he cannot avoid the same. It is therefore, appropriate that the writ petitioner should be provided with a fair and reasonable opportunity of participating in the enquiry and to

demonstrate as to how he is not liable to pay the demand raised against him or in the alternative to demonstrate that he has not actually excavated or lifted the alleged quantity of earth from the tank bed in question, thus consequently reducing his liability, if any.

12. As a side wind, the learned senior counsel also tried to attack the orders passed by the first respondent on 27-03-1996 by pointing out that the District Collector, East Godavari has directed the first respondent to take the present action against the writ petitioner and therefore, it amounts to dictation or super imposition of the will of a superior agency than that of the first respondent and hence the entire exercise is vitiated.

13. I am of the view that this contention does not hold merit for two reasons, firstly, that there is no other material that has been placed on record to decipher the nature and scope of the directions issued by the District Collector, East Godavari to the first respondent-Revenue Divisional Officer for recovering the royalty or seigniorage fee due from the writ petitioner which has not been collected and secondly, if the District Collector has only reminded the first respondent-Revenue Divisional Officer to collect the money due to the State lawfully, such action on the part of the District Collector does not amount to super imposition of his decision on that of his subordinate first respondent-Revenue Divisional Officer. Therefore, I do not find any merit in this contention at all.

14. I therefore, direct the first respondent-Revenue Divisional Officer to provide an opportunity to the writ petitioner in the matter and conduct the enquiry on 26-02-2007. It is normally, not for this court to fix the agenda for the first respondent-Revenue Divisional Officer, but in view of the fact that the lis was not determined in one way or the other for a such long time, in spite of incessant appeals from the concerned residents of the village, with a view to shorten the

entire process of time, I have fixed the date as 26-02-2007. If the first respondent-Revenue Divisional Officer cannot complete this enquiry on the said date, it is open to him to complete the same as expeditiously as possible within the next two months thereafter, but however, by specifically putting the writ petitioner on notice of the dates for conducting such an enquiry. In the meantime, the report said to have been submitted by the Deputy Executive Engineer, I .Y. Sub Division Pitapuram quantifying the earth said to have been removed by the writ petitioner from the tank bed in question, be supplied to the writ petitioner so that he can effectively participate in the hearing.

15. During the pendency of the writ petition when some earth moving equipment of the writ petitioner has been attached, he had been permitted by this court to furnish a bank guarantee in a sum of Rs.3,00,000/- as to raise the attachment of the equipment. A statement has been made at the bar that such a bank guarantee has been furnished. I therefore, direct the writ petitioner to renew and keep the said bank guarantee alive for the next six months period so that the enquiry in to the matter can be concluded in the meantime and based upon the result of the enquiry, an appropriate decision can be taken by the first respondent with regard to return or encashment of the said bank guarantee. It is also needless to point out that if the third respondent comes forward willingly to participate in the enquiry before the first respondent, it may also be permitted to participate therein. If the third respondent also seeks supply of any material like a copy of the report of the Deputy Executive Engineer, Y.I. Sub Division, Pitapuram, the same may at least be allowed to be perused, if not made available.

16. The writ petitioner shall present himself before the first respondent on 26-02-2007 and participate in the enquiry. In case of any default on the part of

the writ petitioner, the 1st respondent is at liberty to proceed in the matter in his absence.

17. The writ petition is, accordingly, disposed of, but however without costs.

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NOOTY RAMAMOHANA RAO, J

05-01-2007

Note:
Copy within a week

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[1] (1998) 5 SCC 170